

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT CHARLES PISCITELLO,

Plaintiff,

v.

16-CV-872
ORDER

THE COMMISSIONER of the Social
Security Administration,

Defendant.

On November 1, 2016, the plaintiff commenced this action. Docket Item 1. On February 10, 2017, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(B). Docket Item 8. On May 31, 2017, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 14; on October 13, 2017, the defendant responded and moved for judgment on the pleadings, Docket Item 20; and on November 3, 2017, the plaintiff replied, Docket Item 21. On April 5, 2018, Judge Scott issued a Report and Recommendation ("R&R") finding that the plaintiff's motion should be granted and that the defendant's motion should be denied. Docket Item 22. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1);

Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's R&R. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the plaintiff's motion and deny the defendant's motion, except that in light of Judge Scott's decision, this Court believes that the appropriate relief is to vacate for further review, not to reverse the Commissioner's decision.

For the reasons stated above and in the R&R, the plaintiff's motion for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 14, is GRANTED; the defendant's motion for judgment on the pleadings, Docket Item 20, is DENIED; the decision of the Commissioner is VACATED; and the matter is REMANDED for further administrative proceedings consistent with Judge Scott's R&R. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: June 29, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE